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CONGRESSIONAL RECORD — SENATE

October 8, 1987

The PRESIDING OFFICER. Without objection, it is so ordered.  
The Senator from Virginia.

## ORDER OF PROCEDURE

Mr. WARNER. Mr. President, I ask for unanimous consent that I may proceed for 3 minutes as if in morning business.

The PRESIDING OFFICER. Is there objection? Hearing no objection, the Senator from Virginia.

## JUDGE BORK

Mr. WARNER. Mr. President, yesterday the leadership of the Senate discussed the Bork nomination and the responsibilities of this body. I am hopeful that we will proceed to have a debate on this issue at the earliest possible date and urge the leadership this morning to renew their efforts to expedite a full floor debate.

We pride ourselves on being one of the oldest, if not the oldest, deliberative bodies here in the United States of America. The issues revolving around this nomination are being deliberated in almost every place in America but here where that debate should take place. By the full Senate on the floor of this Chamber.

This Senator, out of respect for the traditions of this institution, the U.S. Senate, and out of respect for the nominee, has not declared his intentions as to how he would vote. I have done that for, I believe, valid reasons.

First, I have not had the opportunity, nor do I believe many others have had, to examine with care the record compiled by the Senate Judiciary Committee. While the record was given to Senators at the end of last week, there has been inadequate time to review this voluminous report.

Second, some Senators have taken the floor to read carefully prepared statements or to make remarks, but we have not looked at each other, into the whites of our eyes, and provided one another with the benefits of reasoning, argumentation, and confrontation that are essential to a full debate, debate that I think this case merits.

Third, this Senator has been engaged for some several weeks as co-manager of the Senate Armed Services authorization bill for 1988. That required well over 100 hours of debate on the floor. As such, I was deprived of the opportunity to spend as much time as I would have liked to review the testimony of the witnesses who appeared before the Judiciary Committee.

The Senate's advise and consent responsibility for Presidential nominees to the judicial branch, most particularly to the Supreme Court, is one of the most important duties given to this body by the Constitution. I take this responsibility I am certain at all times in this Chamber very seriously and want to have the opportunity to prepare and the opportunity to par-

ticipate in a debate of the Senate as a whole.

The constitutional responsibility under advise and consent, in connection with the judicial branch, I believe, is unique. It is distinguishable, I believe, from our responsibility to nominees for Cabinet posts, senior military, or ambassadorial posts. Cabinet officers are an extension of the Presidency and the President's choices should carry convincing weight.

I put judicial nominees in a separate category because in many respects the third branch of our Government, the judiciary, is created by a joint effort between the executive branch and the advise and consent responsibility of the Senate to approve nominations.

The judiciary is an independent third branch of our Government and the role of the Senate in helping to create this branch through its advise and consent responsibility is among the Senate's chief responsibilities under the Constitution. It requires, in my judgment, the collaborative efforts of the Senate as a whole.

The Senate should not consider itself discharged of this responsibility simply because the Committee on the Judiciary has rendered its report, and some Senators have made statements. In the case of Judge Bork, we have not had the opportunity for a full Senate debate on the floor to exchange our views confront one another in a manner that the Founding Fathers conceived when they established the U.S. Senate. That concerns me.

In the history of this body, there was a time when we did the advise and consent without the benefit of any committee structure. It had not been created, and Members took the floor exchanged their views, often in heated debate, and arrived at a consensus of the Senate. We should do that in this important case.

Theoretically, and I say this without any disrespect to any of my colleagues, if each of us sought to announce ahead of a floor debate how we are going to vote on this nomination it would eclipse the necessity for that debate. A debate would be lifeless, if not useless. I feel very strongly that we would have then surrendered our responsibility.

This Senator out of respect for the traditions of this institution, the Senate acting as a whole, and out of respect for the nominee and President who made that nomination, has deliberately not made a declaration, nor am I about to announce my intention as to how I would vote. I do not make that declaration because I continue to hope that this body will proceed as I have outlined to debate as a whole to reach this decision.

Accordingly, Mr. President, I hope that the Senate leadership will soon arrive at an appropriate schedule and that we may continue this important debate. This Senator will make my declaration at an appropriate time

either in the course of that debate or at the time the vote is taken.

I thank the Chair.

## FOREIGN RELATIONS AUTHORIZATION ACT, FISCAL YEAR 1988

The Senate continued with the consideration of the bill.

Mr. SYMMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

## AMENDMENT NO. 909

(Purpose: To void certain agreements relating to the site of the Soviet Union's embassy in the District of Columbia.)

Mr. SYMMS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows.

The Senator from Idaho (Mr. Symms) proposes an amendment numbered 909.

Mr. SYMMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 111, between lines 16 and 17, insert the following new section:

SEC. 1. (a) FINDINGS.—The Congress finds that—

(1) Soviet espionage agents have installed listening devices in the structure of the new American embassy in Moscow in blatant defiance of the spirit of the embassy agreements and certain recognized norms of international relations;

(2) this Soviet espionage effort has been so extensive and insidious as to require the virtual rebuilding of a large part of the new American embassy in Moscow, the construction of which has cost American taxpayers tens of millions of dollars;

(3) it is well known that Soviet espionage agents intend to use the new Soviet embassy in this country as a platform to conduct highly sophisticated electronic surveillance of the United States Government offices and even the private telephone calls of American citizens;

(4) the purpose of this surveillance can be none other than to undermine the national security of the United States and further the expansionist ambitions of the Soviet Union;

(5) the location of the new Soviet embassy at a site nearly 350 feet above sea level, is ideal for this type of surveillance having been offered to the Soviets at a time when electronic surveillance techniques and potentials were not fully understood in the West;

(6) subsection (b) of 22 U.S.C. 4305 specifically allows the Secretary of State to require any foreign mission to divest itself of real property where otherwise necessary to protect the interests of the United States; and

(7) Congress through enactment of such subsection, has clearly expressed the desire that the Secretary exercise said authority, where necessary to protect the vital security interests of the United States.

THE NEW AGREEMENT WITH SOVIET UNION.—The President shall—

(1) void the current embassy agreement and

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(2) enter into negotiations for a new agreement under which the Soviet Union will move its new embassy to a site in the District of Columbia that is not more than 90 feet above mean sea level.

(c) **EMBASSY AGREEMENTS.**—For the purpose of this section the term "embassy agreements" means—

(1) the "Agreement between the United States of America and the Union of Soviet Socialist Republics on Reciprocal Allocation for Use Free of Charge of Plots of Land in Moscow and Washington", entered into force on May 16, 1969; and

(2) the "Agreement between the United States of America and the Union of Soviet Socialist Republics on Conditions of Construction of Complexes of Buildings of the Embassy of the United States of America in Moscow and the Embassy of the Union of Soviet Socialist Republics in Washington", entered into force on December 4, 1972.

Mr. PELL. Will the Senator from Idaho yield?

Mr. SYMMS. Yes.

Mr. PELL. Mr. President, I ask unanimous consent that on this amendment there be no second-degree amendment and that we have a 10-minute time limitation on each side.

Mr. SYMMS. I agree with that.

Mr. HELMS. Reserving the right to object, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PELL. Mr. President, is my unanimous consent agreed to?

The PRESIDING OFFICER. Ten minutes on each side and no second-degree amendment. Without objection, it is so ordered.

The Senator from Idaho.

Mr. SYMMS. Mr. President, I yield myself such time as I might consume.

Mr. President, I thank the distinguished chairman of the committee and the ranking member for the time agreement and for the agreement that no amendments are in order. I might say this is the third time the Senate has considered this amendment. The first vote was on July 30 on a vote to table the Symms sense-of-the-Senate amendment. The motion to table failed by a vote of 71 to 25. The second vote was on September 24 as an amendment to the Department of Defense authorization bill and the language is identical that was voted on on the Defense authorization bill as the language which is here before the Senate today. That amendment was agreed to by a vote of 70 to 27.

Mr. President, the House version of the State authorization bill does contain language which is similar although not identical to the Symms language which we now have before the Senate.

The Senate is already on record supporting the language we have and I think that the language we have here

in the Senate is much preferable to the House language because the House language contains a provision which would allow the President to waive voiding the Embassy agreements between the United States and the Soviet Union.

The Senate is on record in favor of this language which makes it clear that the security interests of the United States will be looked out for and that the Embassy agreements should be voided between the Soviet Union and the United States as is contained in the current law, which gives the Secretary of State the authority right now under subsection (b) of 22 U.S. Code 4305, specifically allowing the Secretary of State to require any foreign nation to divest itself of real property where otherwise necessary to protect the interests of the United States.

I think that is the case now, but with the current love-in between the United States and the Soviet Union that is going on over the INF, the United States State Department, of course, does not want to do anything that might rock the boat or offend the Soviet Union dictators, so to speak.

I reserve the remainder of my time or I am happy to yield some time to the distinguished ranking member.

Mr. HELMS. I would like that in just a moment.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. Mr. President, I yield myself such time as is necessary.

Mr. President, the Senate has spoken already twice on this matter and has approved the substance of the amendment of the Senator from Idaho. I have no objection to this amendment although obviously, having voted against it in the past, I do not agree with it. But I have no objection to it and I recommend its adoption.

Mr. HELMS. Will the Senator yield?

Mr. SYMMS. I will be happy to yield such time as I have to the distinguished Senator from North Carolina.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I thank the Chair and I thank the distinguished Senator from Idaho.

Mr. President, this is an amendment that absolutely needs to be drilled home again and again so that it will penetrate the conscience of the U.S. State Department on a perfectly outrageous development with respect to the Soviet Embassy in the United States and the United States Embassy in Moscow.

The Soviets combed the United States into Mount Airy up on top of a hill, one of the highest points if not the highest point where they could monitor electronically everything in Washington, D.C. They can monitor with electronic equipment the Foreign Relations Committee of the U.S. Senate. And as I understand it, the Oval Office

In the meanwhile, what do we do about our Embassy which is in Moscow? We agreed to put it into a swamp and proceeded to build it. Then the Soviets were not satisfied with that disadvantage of the United States. Through error, misjudgment, inefficiency, ineptitude whatever, the State Department began building the United States Embassy in Moscow and they allowed offsite prefabrication. That is where the bugging occurred.

Mr. President, I thank the Senator for offering this amendment again. As he has indicated, it is a part of the Department of Defense authorization bill, which is going absolutely nowhere. The President is going to veto it and there are enough votes in the Senate to sustain the veto. But there is some hope that we will enact this bill into law and the President will sign it.

In any case, I commend the Senator and I thank him for the amendment. It is cleared on this side.

Mr. PELL. I yield back the remainder of my time.

Mr. SYMMS. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment.

The amendment (No. 909) was agreed to.

Mr. PELL. My vote should be registered as no, but the ayes have it.

Mr. SYMMS. I move to reconsider the vote by which the amendment was agreed to.

Mr. HELMS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## AMENDMENT NO. 910

Mr. HELMS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an amendment numbered 910.

Mr. HELMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 111, between lines 16 and 17, insert the following new title:

## TITLE —DIPLOMATIC IMMUNITY ABUSE PREVENTION ACT

## SECTION 1. SHORT TITLE.

This title may be cited as the "Diplomatic Immunity Abuse Prevention Act."

## SEC. 2. CRIMES COMMITTED BY DIPLOMATS.

Title I of the State Department, Executive Order 12812, 21 U.S.C. 4305, et seq., commonly referred to as the "Foreign Missions Act," is amended by inserting after section 2044 the following:

(a) Each Crime committed by a diplomat